

REMARKS

The Present Invention

The invention is directed to an insulated pouch that has a sealed flexible bag not being permeable to water and an insulating layer, and is suitable to heat food product in a microwave oven.

The insulated pouch has a base suitable to enable the insulated pouch to stand, can be comfortably held after being heated by a consumer, so that a food product can be consumed directly therefrom without requiring the use of conventional dishware. Note, the element of Claim 1, described as "held by a consumer after heating " means comfortably held in the hand of the consumer (i.e., not burning) while the consumer is consuming all of the food product. See Specification at page 3, lines 18-20.

Restriction

Applicants affirm having elected to prosecute the invention of Group I, Claim 1-15, with traverse. Claims 16-19 have been withdrawn.

Claims 1-3, 5, 7-10, 13, and 14 are pending.

103(a) Smart, et al. in view of Galomb

Claims 1-3, 5, 7-10, 13 (claim 15 had been previously canceled) were rejected under 35 U.S.C. 103(a) as being unpatentable over Smart, et al. (US 4,890,439) in view of Galomb (US 6,245,367). According to the previous Office Action, Smart, et al., disclose an insulated pouch comprising: a sealed flexible bag (figure 3, item 14) comprising a food product (figure 3, item 28), the flexible bag not being permeable to water and having an opening means; since the flexible bag can be composed of polyester or PET, it is known that it will be impermeable to water.; As further recited in claim 1, Smart, et al., further disclose an insulating layer (column 6, line 28-31) covering at least a portion of the sealed flexible bag (figure 3, item 12), wherein the insulated pouch can be heated in a microwave oven (column 4, line 63-68); etc.

The Office Action admits that Smart, et al., do not teach:

- (1) wherein the sealed flexible bag further comprises an oxygen barrier comprising polyvinylidene chloride (PVDC), ethylene vinyl alcohol (EVOH) or both.;
- (2) wherein the insulating layer further comprises an attaching means for attaching an eating utensil.
- (3) Additionally, Applicants respectfully point out that Smart, et al., do not disclose wherein the insulating layer is positioned from about 0.5 to about 3.0 cm above the base of the insulated pouch.
- (4) Moreover, Smart et al. is silent regarding consumer consuming the food directly from the package. Smart et al. at column 1, line 8-10; column 4, line 57-66 states that the package "serves the food" to the consumer, but this may not be the same as being suitable for eating out of while holding the container. Smart et al. contemplates that the container will be held by the flanges, which does not facilitate eating directly out of the container. Nothing at column 1, line 8-10;

column 4, line 57-68 states that the package is to be held by the consumer by the insulating layer while eating directly out of the package.

(5) Furthermore, Smart et al. lacks a base that permits the package to stand – their package lies flatly.

Galomb is cited to remedy deficiencies for flexible package that further functions as the container from which to eat the food product. Garvey, et al. (US 5,241,150) is cited for disclosing insulating (column 6, line 48-63) a flexible, vapor impermeable (column 5, line 56-60), microwaveable package containing a food product wherein an additional layer to improve the freshness and shelf life of the food product is an oxygen barrier layer comprised of PVDC or EVOH; etc.

While Applicants respectfully traverse the rejection, among other reasons, as reiterating the problem to be solved without indicating where in the references the solution is disclosed or suggested.

Smart et al. are primarily directed to microwaving and browning foods using a composite. While Galomb discloses a sealed flexible package that further functions as the bowl from which to eat mostly dry cereal with perhaps sugar and milk, it is not microwavable and not insulated. While Smart et al. and Galomb et al. both recognize the need to maintain freshness and to eat food directly from the package, they are non-analogous in that one is directed to a microwavable package and the other one is intended for foods that are not to be cooked. Therefore, one skilled in the art would expect that they would be made of different materials (Galomb et al. package is made of a laminate of polyester and polyethylene). The combined references fail to disclose or suggest an oxygen barrier comprised of PVDC or EVOH. In Garvey, US Patent 5,241,150, a microwave food package having an orifice to dispense foodstuff is described, however the package is intended for dispensing food but not eating directly out of the package. That a claimed element is found somewhere in a plurality of

references is not sufficient to make a prima facie case of obviousness. There must be some suggestions or motivation in the references for their combination.

The unique claimed combination of elements is not obvious over the combination of references. Uniquely, according to the present invention, the bottom of insulating layer is placed at least 0.5 cm to about 3.0 cm higher than the bottom of flexible bag so that the insulated pouch can stand. As stated on page 7, lines 21-25, it is preferred that the bottom of the insulating layer be placed at least 0.5 cm higher than the bottom of the flexible bag so that the insulated pouch can stand, and preferably, from about 0.5 to about 3.0 cm higher than the bottom of the flexible bag. None of the cited references discloses or suggests this feature.

Claim 14 is Not Obvious Under 103(a)

Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smart, et al. (US 4,890,439) and Galomb as applied to the claims above, and further in view of Lawless, et al. (US 5,395,632). According to the Office Action, Smart, et al., further teach a flexible, insulated, microwaveable container that is to be displayed in a retail environment (column 4, line 39-48). Further according to the Office Action, Smart, et al. in view of Galomb does not disclose wherein the top section comprises an orifice to hang the insulated pouch.; Lawless, et al., teach a flexible food package that further comprises an orifice (figure 6, item 38) for the purpose of displaying said product by suspending the package (column 5, line 49-60). ; etc.

Applicants respectfully traverse. Claim 14 is patentable as dependent on patentable Claim 1 as discussed above.

Moreover, Lawless et al. relates to packaging for thinly sliced meats, which packaging is not microwavable, is not insulated, does not have a base for standing, and is not intended to be eaten from directly, with no utensil attached thereto. The package is semi-rigid, rather than flexible. Viewed as a whole, the combination of the references and the invention are quite different.

CONCLUSION

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

/Ellen Plotkin/

Ellen Plotkin
Registration No. 36,636
Attorney for Applicant(s)

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